IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6196 of 2001
with
Civil Application No.958 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAROTAR SHERDI UTPADAK SEVA SAHAKARIMANDALI LTD.

Versus

DIRECTOR (SUGAR) AND JOINT REGISTRAR

Appearance:
MR MUKESH A PATEL for Petitioner No. 1-2
GOVERNMENT PLEADER for Respondent No. 1
MR BG JANI for Respondent No. 2
MR MK VAKHARIA for Respondent No. 3
MR NIKHIL D JOSHI for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/08/2002

ORAL JUDGEMENT

With the consent of the parties, the matter is taken up for final hearing today.

The petitioner, Charotar Sherdi Utpadak Seva Sahakari Mandali Limited, has filed this Special Civil Application for a direction against first and second respondents to comply with the order dated 10th July, 2001 passed by the first respondent, which is produced at Annexure 'D' to the petition.

During the pendency of this Special Civil Application, by an interim order of this Court, 10000 bags of sugar, which were lying in the factory godown of respondent No.2, were ordered to be sold in the open market as it was found that the said commodity is a perishable commodity. After selling the said sugar in the market, through the Sale Committee, the amount which is realised is deposited in this Court and the Registrar has invested the amount by way of fixed deposit in a Nationalised Bank. The amount in question is accordingly secure at present. It is not in dispute that the present petitioner has already filed a Lavad Suit against Charotar Sahakari Khand Udyog Limited, respondent No.2 herein, for recovery of money claim. The aforesaid suit is numbered as Lavad Suit No.481 of 2001, which is pending in the Court of the Board of Nominees, Anand. Similarly, some other creditors have also filed many suits against respondent No.2. Two of the suits are filed by Charotar Nagarik Sahakari Bank Limited, i.e. respondent No.3 herein, and they are numbered as Lavad Suit Nos. 285 of 2001 and 1200 of 2000.

There are certain Awards passed by the Labour Court, Anand, and Industrial Court, Nadiad, in favour of respondent No.4, Majoor Mahajan Sangh. It is the say of respondent No.4 that it has priority in the matter of recovering the amount from the respondent No.2, Charotar Sahakari Khand Udyog Limited, which is a chronic debtor.

At the time of hearing of this Special Civil Application, all the contesting parties have agreed to the suggestion that the pending suits before the Board of Nominees may be adjudicated as early as possible so that there may be a finality of the claim of the concerned creditor / plaintiff. It is agreed by all concerned that till the Board of Nominees decides the pending suits, as referred above, the amount in question may be continued to be invested in the name of the Registrar of the High Court and for that purpose, if the F.D. is required to be renewed, the Registrar may renew the same initially for a further period of one year at the time of its

expiry. Till the Nominee Court decides the aforesaid suits, the Registrar may continue to renew the fixed deposit periodically from time to time.

All the sides have agreed that so far as the claim of the labourers is concerned, the respondent-Union may file appropriate proceedings for executing the Award, which is passed in its favour, and for that purpose, the remedy available under the appropriate law can be availed of and since the respondent No.4 is not a party before the Board of Nominee, at this moment, it will be open for the respondent No.4 herein to apply before the Board of Nominees for being joined as party in each of the pending suits and the Board of Nominee shall grant such application, as, ultimately, at the time of disbursing the amount, the presence of respondent No.4 may be vital and even though respondent No.4 may not be concerned with the pending suit under the provisions of the Cooperative Societies Act, in order to see that they may be able to canvass their say at the time of disbursing the amount, they are a proper party to be joined before the Board of Nominee in all the pending suits. After the decision of the Board of Nominees, the party can move the appropriate authority for disbursement of the amount in question and at that time, the question of encashing the fixed deposit may be considered appropriately. It is clarified that so far as the claim of the labourers is concerned, the same is already adjudicated and, therefore, the same is not required to be adjudicated again by the authority under the Industrial Law. It will be open for respondent No.4 to move the appropriate authority for recovery certificate as per the provisions of law, and, in any case, if any recovery certificate is issued in favour of respondent No.4-Union, it will be open for the respondent No.4-Union to move appropriate application. If any Recovery Certificate is issued in favour of respondent No.4, it will be open for respondent No.4 to apply before the Custodian / Liquidator or any other concerned Officer who is in charge of the affairs of respondent No.2, for disbursing the amount in question. However, at that stage, the Custodian / Liquidator, etc., also will consider the claim of other rival claimants and if there is a decree in favour of the petitioners or any other rival claimants, their claim also will be taken into consideration by the Custodian / Liquidator, etc. It is clarified that even if the certificate is issued in favour of respondent No.4 prior in point of time, then also, no amount will be disbursed, and the Custodian / Liquidator will have to wait for the decision of the Board of Nominee and, therafter may decide the question of disbursement in accordance with law and as per the

priority under the law. It will also be open for the Kheda District Central Cooperative Bank to apply before the Board of Nominee for being joined as party in the pending suits, as referred above, and if any such application is filed, they also may be joined as party in the pending suits so that they can watch the proceedings as they are also vitally interested in the amount which is deposited in the Fixed Deposit.

In the facts and circumstances of the case, the Board of Nominees, Anand, is directed to render the decision as early as possible, preferably on or before 31st January, 2003. It is ordered that all suits should be heard together. It is also clarified that in case decree is passed in favour of any of the plaintiffs in the suits, such plaintiff will have to lodge the claim before the Custodian / Liquidator, etc., on the basis of such decree and, as indicated above, the claim is to be adjudicated by the Custodian / Liquidator, etc., as per priority and in accordance with law in the matter of disbursing the amount from the assets of respondent No.2 as well as from the amount, which is lying in the fixed deposit. The Board of Nominee shall give top preference in deciding all these suits, as large amount of various creditors is blocked.

The present order is passed with the consent of all concerned parties who are appearing in the present proceedings.

It is clarified that in case the term of the fixed deposit is over, the Registrar of this Court shall reinvest the same for a further period of one year after taking prior approval from the Court.

Petition is accordingly disposed of in view of the consensus between the parties.

In view of the disposal of the main Special Civil Application, no order in C.A. No.958 of 2002.

Writ of this Court to be sent to the Board of Nominee, Anand, forthwith.

(P.B. Majmudar, J.)

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(apj)